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| 09/784,622 | 02/14/2001 | Frederik Ekkel | 000117 | 2720 |

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EXAMINER

KANG, PAUL H

ART UNIT PAPER NUMBER

2141

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/784,622

Applicant(s)

EKKEL, FREDERIK

Examiner

Paul H. Kang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-13.

Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: applicant's arguments are not deemed to be persuasive. See attached Response to Arguments.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

PAUL H. KANG
PRIMARY PATENT EXAMINER

Continuation Sheet (PTOL-303). Continuation of 11.

Response to Arguments

Applicant's arguments filed March 18, 2005 have been fully considered but they are not persuasive. It is worth noting here, as noted in the previous Office Action, in examining this application full faith and credit has been given to the search and action of the previous examiner. MPEP § 719.05.

The applicants argued in substance that:

A) “Ferber does not teach providing a transfer of information content at a transit terminal, as specifically claimed... The applicant specifically defines a transit terminal at page 4, lines 17-19:

‘A ‘transit terminal’, as used herein, indicates a travel departing or arrival port, such as an airport, a train station or a bus stop.’

Ferber does not reference terminal at airports, train stations, or bus stops, and does not teach providing the transfer of information content at such transit terminals.” See Remarks, page 5.

As to point A, applicant’s suggested definition of a “transit terminal” does not limit the meaning to one of an airport, a train station or a bus stop.

During examination of this patent application, the claims were given their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim were not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343

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F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").

However, an applicant is entitled to be his or her own lexicographer. Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). However, applicant's definition here is not as explicit as applicant alleges. It does not require reading into the meaning of "transit terminal" an airport, a train station or a bus stop.

The definition of a "transit terminal" provided by the applicant is "a travel departing or arrival port, such as an airport, a train station or a bus stop." This definition uses the open ended language "such as," and therefore does not require imparting on the meaning "an airport, a train station or a bus stop." Accordingly, these limitations, recited only in the specification, are not imported into the claims. The definition we're then left with is "a travel departing or arrival

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port.” This definition does not require the prior art to specifically teach terminals at airports or the like, but may comprise simply an access point where a mobile device may access the network. The prior art of record, specifically Ferber, teaches such a mobile network wherein mobile users travel (i.e. move) to or away from various network access points. The applicant is invited to amend the claim language to remove any ambiguities present, and thus more precisely clarify the scope and breadth of the claimed invention.

B) “The applicant specifically defines a communication-restricted environment in claim 1 as:

‘[an] environment that blocks public access to an information content that would otherwise be available except for the communication-restricted environment.’

Ferber does not teach a communication-restricted environment, as defined by the applicant, and does not teach providing use of the information content in such a communication-restricted environment.”

As to point B, for the reasons set forth in point A above, “a communication-restricted environment” is given the broadest reasonable interpretation in light of the specification. The definition given by the applicants require only that some public access to information is restricted. Without more detail, this definition comprises any computer environment that require user to provide userid's and passwords to login to gain network access. The system of Ferber teaches this. Ferber teaches providing e-coupons to users based on their user identity and the profile of the user. See Ferber, §§ 0010-0011. Additionally, Ferber teaches providing access to

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such profiles by enabling the user to gain access to their profiles by use of valid username and password. See Ferber, §§ 0026-0028. Accordingly, applicant's arguments regarding a "communication-restricted environment" is not deemed to be persuasive.

C) "As can be seen in the cited text, although Sporgis teaches that a GPS-enabled communication device can be mounted on automobiles or other means of transportation, Sporgis does not teach assigning a traveling location to an individual in a means of transportation, as specifically claimed in claim 12."

As to point C, the examiner respectfully disagrees with the applicant. The applicant alleges the GPS-enabled communication device of Sporgis is not "assigning a traveling location to an individual" without specifically setting forth why. In Sporgis, the GPS-enabled communication device monitors each player's present physical location. The device and the users are clearly "traveling." Specific locations of the device and the users are "assigned" to each device and user, and transmitted to a remote server so as to transmit clues to those players in response to their locations. Therefore, the "treasure hunt-type game" of Sporgis teaches "assigning a traveling location to an individual," i.e. track a user's location, and providing at that location the information content.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul H. Kang whose telephone number is (571) 272-3882. The examiner can normally be reached on 9 hour flex. First Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


PAUL H. KANG
PRIMARY PATENT EXAMINER